

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AKIVA AVIKAIDA ISRAEL,

Plaintiff,

v.

SHMARYAHU BROWNSTEIN, *et al.*,

Defendants.

No. 2:21-cv-00262-TLN-EFB (PC)

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The action proceeds on plaintiff's second amended complaint, alleging that defendants have violated her constitutional rights to free exercise of religion and equal protection and the Religious Land Use and Institutionalized Persons Act. ECF Nos. 26, 28.

Defendants have filed a motion for terminating sanctions or, alternatively, an order compelling plaintiff to participate in her deposition. ECF No. 78. Defendants argue that plaintiff has refused to be deposed and has also served deficient and untimely responses to written discovery. *Id.* Plaintiff responds that, during the relevant time period, she experienced "medically disabling episodes of epilepsy, urinary incontinence and acute mental incapacitating traumas, all ongoing as of 8/9/2023[.]" ECF No. 80. According to plaintiff, she "could not medically attend her deposition and comply with operative Discovery and Scheduling order" due to these issues, which caused a "sustained disruption to all vital brain functions." *Id.* Plaintiff

1 argues that she will be prejudiced if forced to respond to discovery until her medical issues are  
2 resolved. *Id.* “Presently, black-outs, lost time and memory loss are unmitigated. These rob  
3 [plaintiff] of sufficient cognitive capacities necessary to litigate for 2 to 3 months.” Plaintiff asks  
4 the court for relief from the present discovery schedule. *Id.*

5 In reply to plaintiff’s representations regarding her medical condition, defendants  
6 recommend that the court either stay the case while plaintiff is unable to litigate or continue all  
7 dates by 90 days. ECF No. 81.

8 Plaintiff’s opposition brief raises the issue of her competence. Plaintiff does not indicate  
9 whether or when her conditions may abate to such a degree that she can litigate this action. The  
10 court must address this potential issue, because Federal Rule of Civil Procedure 17(c)(2) requires  
11 the court to “appoint a guardian ad litem – or issue another appropriate order – to protect a minor  
12 or incompetent person who is unrepresented in an action.” While the court has discretion to craft  
13 such an order, an indefinite stay of proceedings is an abuse of discretion where it appears that the  
14 litigant will not regain competency in the future. *Davis v. Walker*, 745 F.3d 1303, 1311 (9th Cir.  
15 2014).

16 In light of plaintiff’s representations regarding her health, the court will vacate all pending  
17 deadlines in this case. The parties shall submit status reports within 45 days of the date of this  
18 order indicating the current state of discovery (including any attempts to meet and confer) and  
19 plaintiff’s ability to litigate the action going forward. Once these reports have been submitted, the  
20 court will issue a revised schedule or other appropriate order.

21 Accordingly, it is hereby ORDERED that:

- 22 1. Defendants’ August 4, 2023 motion for terminating sanctions or to compel discovery  
23 responses (ECF No. 78) is DENIED without prejudice;

1           2. Within 45 days of the date of this order, the parties shall submit status reports  
2           informing the court of the current status of discovery, the current status of plaintiff's  
3           health and ability to litigate the case (including any indication of future competence),  
4           and recommendations for the case going forward.

5           So ordered.

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7       Dated: September 13, 2023

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE